

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of	)	
	)	
National Public Safety Telecommunications	)	WT Docket No. 99-87
Council Petition for Stay of Interim Narrowband	)	
Implementation Deadlines	)	

**COMMENTS OF FREEPORT-MCMORAN COPPER & GOLD INC.**

Freeport-McMoRan Copper & Gold Inc. ("FCX") hereby submits these Comments in response to the Commission's Public Notice dated November 2, 2009 in the above-captioned proceeding,<sup>1</sup> involving a Petition for Stay ("NPSTC Petition") filed by the National Public Safety Telecommunications Council ("NPSTC"). FCX is the world's largest publicly owned copper company, the world's leading producer of molybdenum and a significant producer of gold. Collectively, FCX and its subsidiaries hold more than 300 Private Land Mobile Radio ("PLMR") licenses in the 150-174 MHz and 421-512 MHz bands (the "Affected Bands"), with such licenses authorizing the use of several thousands of base stations, repeaters, mobile and portable radios by thousands of employees throughout the country.

As set forth below, FCX supports a stay of the January 1, 2011 interim narrowbanding deadlines specified in Sections 90.203(j)(4), (5), (10) and 90.209(b)(6) of the Commission's rules (the "Interim Deadlines"), and application of that stay to both Public Safety and private industry PLMR licensees, as the rationale for a stay is consistent with respect to both groups of licensees. In support of these Comments, the following is shown.

**I. Due to the Critical Safety-Related Function of PLMR Radios in the Affected Bands and the Requirement for Interoperability Between Private Industry and Public Safety, the Narrowband Conversion Deadlines for Both Groups Must be Consistent**

**A. PLMR Radios Provide Critical Safety-Related Functions for Private Industry**

PLMR systems provide critical safety functions for private industry, particularly in the open pit mining industry, where employees often work 24 hours per day/7 days per week, in extremely remote, hostile and mountainous terrain, and in open pits that can be thousands of feet deep. Even where all appropriate safety precautions are taken, these operations involve considerable risks to the employees of mining companies as well as to the environment. Accordingly, prompt response to accidents, injuries or other emergencies is vitally important to the safety of the employees and the surrounding environment. Specifically, for mining companies, PLMR systems:

- Are often the only effective communications at remote mining sites, where cell service can be unavailable, particularly at the bottom of pits.
- Provide mining employees with the ability to prevent accidents.
- Permit instant communication in the event of an accident, injury or other emergency, including environmental emergencies.
- Allow mining company internal safety units to act as “first responders” to emergencies when fire, air and ground rescue, EMS, HAZMAT and law enforcement (“Public Safety”) are too far to respond immediately.
- Are used by mining company internal safety units to communicate with Public Safety entities.

**B. Seamless Interoperability Between Industry and Public Safety is Required**

The safety-related functions of PLMR radios are dependant upon seamless interoperability with Public Safety. As explained above, in order to ensure prompt response to

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<sup>1</sup> Public Notice, DA 09-2364 (rel. November 2, 2009) (“Public Notice”).

emergencies, employees must be able to immediately communicate with each other and with internal safety units, and those internal safety units must be able to immediately communicate with Public Safety.<sup>2</sup> Indeed, the Commission has recognized the critical safety functions served by PLMR systems and the need to maintain seamless communications with respect to such systems, by confirming that:

“any degradation or interruption in the wireless radio systems used by the industries during emergency periods could significantly hamper the efforts of emergency responders and law enforcement, whose success can depend upon the swift and timely receipt of critical information.”<sup>3</sup>

As explained below, if such interoperability is disrupted, the safety of many thousands of employees will be put at substantial risk.

**C. To Ensure Seamless Interoperability in Emergency Situations, the Narrowband Conversion Deadlines for Industry and Public Safety Must Be Consistent**

The *only way* that prompt and seamless emergency response can occur - between employees, internal safety units and Public Safety - is if all PLMR units operated by these entities are compatible at all times. However, if the Interim Deadlines are imposed on private industry as of January 1, 2011 without imposing those deadlines on Public Safety, then private industry will be forced to begin utilizing 12.5 kHz equipment for new license and modification

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<sup>2</sup> For example, upon arriving at the scene of an emergency, internal safety units rely on existing PLMR systems to continuously communicate with Public Safety entities. For example, at an accident site, internal safety units use these wireless systems to notify the appropriate Public Safety (i.e., hospital or ambulance) units of the nature of the injuries that have been suffered, and to receive instructions and orders regarding patient treatment and transport. If transport of a victim is necessary, the internal safety unit and the Public Safety Units unit will often drive toward each other to expedite the transfer of the victim, and each unit will use the PLMR system to facilitate the identification of an appropriate rendezvous point while continuing to discuss the appropriate course of treatment and the victim's status. In addition, internal safety units responding to a fire in a remote location will use the PLMR systems to help Public Safety fire departments locate the fire and to request any additional support that may be required such as rescue or HAZMAT services."

<sup>3</sup> "FCC Staff Report On NTIA's Study Of Current And Future Spectrum Use By The Energy, Water And Railroad Industries", p.6 (July 30, 2002) ("Staff Report").

filings, while Public Safety will not yet be required to operate on such equipment. This will result in disruption to interoperability and the following adverse, dangerous consequences for such companies and their employees: (i) the newly installed 12.5 kHz equipment will create substantial internal incompatibility problems for private industry companies with respect to pre-existing single mode 25 kHz equipment (many PLMR licensees have used single-mode 25 kHz equipment for years); (ii) such internal incompatibility problems will prevent seamless emergency communications with internal safety units; and (iii) seamless emergency communication between private industry and state and local Public Safety entities (many of whom will not yet have converted to 12.5 kHz operation) will be prevented. The Commission simply should not knowingly encourage a situation that prevents seamless emergency communication between private industry and Public Safety, by imposing different narrowband deadlines.

**II. Public Safety and Private Industry Should Be Required to Complete the Narrowband Conversion by January 1, 2013, But Neither Group Should be Subject to the Interim Deadlines**

**A. The Full Conversion Deadline of January 1, 2013 Should be Retained**

NPSTC does not request a stay with respect to the January 1, 2013 deadline for full conversion to narrowband utilization on the Affected Bands, and it states that it fully supports such deadline. FCX also supports retaining the January 1, 2013 conversion deadline, as the underlying policy and need for full migration to narrowband operation is not in dispute.

**B. The Interim Deadlines Should Be Stayed for Both Private Industry and Public Safety**

As explained below, with respect to the need for seamless and uninterrupted emergency communications, and the risks and burdens associated with the conversion to narrowband operations, private industry and Public Safety are “similarly situated” and therefore the Commission must avoid imposing inconsistent regulatory requirements on such similarly

situated groups.<sup>4</sup> The Interim Deadlines should be stayed for both private Industry and Public Safety, for the following reasons:

**1. Interoperability Issues**

*For both private industry and Public Safety*, the Interim Deadlines will pose substantial interoperability problems for the following reasons:

- *For both private industry and Public Safety*, the interim January 1, 2011 deadline specified in Section 90.209(b)(6)(i) and (ii) (prohibiting as of 1/1/2011 the filing of new 25 kHz license applications and contour expanding modification applications for existing 25 kHz stations) will pose substantial interoperability problems internally for each group, and between each group, risking the safety of many thousands of people. See, supra., Section I(C); NPSTC Petition at p. 4-9.
- *For both private industry and Public Safety*, the interim January 1, 2011 deadline specified in Section 90.203(j)(10) (prohibiting as of 1/1/2011 the manufacture of equipment operating in the Affected Bands with a maximum channel bandwidth greater than 12.5 kHz after 1/1/2011), poses significant interoperability risks because dual mode 12.5/25 kHz radios will not be available for replacing or adding radios to existing 25 kHz systems between January 1, 2011 and January 1, 2013. Even while good-faith narrowbanding efforts proceed in an effort to timely comply with the ultimate migration date, *all* PLMR licensees must be permitted to replace existing equipment with compatible equipment. See NPSTC Petition at 4-6.

**2. Cost Issues**

*For both private industry and Public Safety*, the recession and related economic downturn is a major unanticipated circumstance which did not exist when the Interim Deadlines were adopted. For many PLMR licensees with wide-area networks, with hundreds of licenses and thousands of interoperable radios, full-scale narrowband conversions will be exceedingly expensive, in some cases costing millions of dollars. Under the current economic circumstances, the Commission should ensure that licensees are not unduly burdened by retention of the Interim Deadlines, particularly when the ultimate conversion deadline is not too far away in any event. Undue costs faced by PLMR licensees associated with retaining the Interim Deadlines include the following:

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<sup>4</sup> See Melody Music, Inc. v. FCC, 345 F.2d 730 (D.C. Cir. 1965).

- The interim deadline requiring as of 1/1/2011 equipment authorization applications for transmitters operating in the Affected Bands to specify 6.25 kHz capability or equivalent efficiency (See Section 90.203(j)(4) and (5)) will require PLMR licensees to begin prematurely purchasing significantly more expensive digital 6.25 kHz-capable equipment that licensees “may not want nor are likely to use in the lifetime of that radio.” See NPSTC Petition at 10. As the Commission is aware, conversion to 6.25 kHz has not yet been formally mandated. Without such mandate, requiring the purchase of 6.25 kHz capable equipment two years earlier, at a significant premium, and in light of the unexpected and dramatic economic downturn, just does not make sense.
- In light of the fact that industry-wide availability of competitively-priced 6.25 kHz-compatible equipment has not yet been achieved, it is likely that retention of the Interim Deadlines will push PLMR licensees to convert at this time to 12.5 kHz systems rather than to 6.25 kHz systems, as the Commission would prefer. While the Commission has not yet mandated full migration to 6.25 kHz, the Commission has made it clear that “12.5 kHz technology is a transitional step in the eventual migration of PLMR systems to 6.25 kHz technology [and] .... the Commission will adopt a date by which users must migrate to 6.25 kHz technology....”<sup>5</sup> Staying the interim deadlines now could provide much-needed additional time for competitively-priced 6.25 kHz-compatible equipment to become widely and readily available and thus provide PLMR licensees a better opportunity to convert directly to 6.25 kHz by 2013. Without such relief, licensees such as FCX will be unnecessarily required to convert twice - now to 12.5 kHz, and later to 6.25 kHz, doubling the huge expense associated with this effort.
- The interim deadline prohibiting as of 1/1/2011 the filing of new 25 kHz license applications and contour expanding modification applications for existing 25 kHz stations will, for many PLMR licensees, have the effect of forcing licensees to prematurely undergo full conversions of 25 kHz systems well in advance of the ultimate January 1, 2013 migration deadline, to avoid the substantial interoperability problems discussed above. The Commission should not in effect require such large-scale and expensive conversions well before the actual migration deadline.

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<sup>5</sup> Third Report and Order, WT Docket No. 99-87, p.6-7 (rel. March 26, 2007).

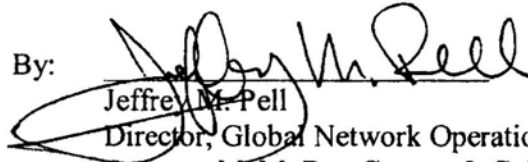
### III. Conclusion

**WHEREFORE**, for the foregoing reasons, a stay of the Interim Deadlines should be imposed by the Commission with respect to *both* Public Safety *and* PLMR licensees. Staying the Interim Deadlines for both groups would, on one hand, not adversely impact the ultimate migration to narrowband operations by 2013. On the other hand, staying the Interim Deadlines for both groups would likely reduce interoperability and safety problems, avoid unnecessary substantial costs in a difficult economic environment, and increase the likelihood of conversions directly to 6.25 kHz operations.

Respectfully submitted,

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